

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

AUSTIN DE TAGLE,  
Plaintiff,

v.

SAN JOSE POLICE OFFICER JULIAN  
#4610,  
Defendant.

Case No. 23-cv-05095-VKD

**ORDER SCREENING AMENDED  
COMPLAINT; ORDER TO ISSUE AND  
SERVE SUMMONS**

Re: Dkt. No. 6

Plaintiff Austin de Tagle, who is representing himself, filed this civil rights action against Santa Clara County and the San Jose Police Department on October 4, 2023. Dkt. No. 1. On October 10, 2023, the Court issued an order granting Mr. de Tagle's application to proceed *in forma pauperis* ("IFP") and screening his complaint pursuant to 28 U.S.C. § 1915(e). Dkt. Nos. 2, 5. The Court determined that Mr. de Tagle's original complaint failed to state a claim on which relief could be granted and directed him to file an amended complaint. *See* Dkt. No. 5.

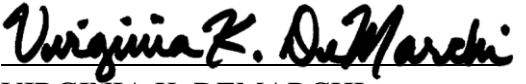
Mr. de Tagle did so on November 1, 2023. Dkt. No. 6. The amended complaint asserts a Fourth Amendment claim for unlawful arrest or detention under 42 U.S.C. § 1983 against "San Jose Police Officer Julian #4610." *Id.* It does not assert claims against either Santa Clara County or the San Jose Police Department. The Court concludes that Mr. de Tagle has voluntarily dismissed those defendants from the case. *See Lacey v. Maricopa Cty.*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc) ("For claims dismissed with prejudice and without leave to amend, we will not require that they be repleaded in a subsequent amended complaint to preserve them for appeal. But for any claims voluntarily dismissed, we will consider those claims to be waived if not repleaded.").

1 Having reviewed the amended complaint, the Court concludes that, for purposes of 28  
2 U.S.C. § 1915(e), Mr. de Tagle's allegations are sufficient to permit him to proceed with this  
3 action without prepayment of the filing fee against San Jose Police Officer Julian #4610. The  
4 Court therefore directs the Clerk of the Court to issue the summons and to add San Jose Police  
5 Officer Julian #4610 as a defendant on the docket.

6 The U.S. Marshal for the Northern District of California shall serve, without prepayment  
7 of fees, a copy of the amended complaint and this order upon San Jose Police Officer Julian  
8 #4610.

9 **IT IS SO ORDERED.**

10 Dated: November 6, 2023

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13 VIRGINIA K. DEMARCHI  
14 United States Magistrate Judge  
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United States District Court  
Northern District of California